

LAY MIDWIVES—REGULATION

CHAPTER 365¹⁷

S. B. No. 238

AN ACT

relating to the regulation of lay midwives, to a lay midwifery board appointed by the Texas Board of Health, its powers and duties; defining an offense under this Act, and to the appropriation of fees received under the Act for use by the department in administering the Act; and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Approved lay midwifery training course" means a training course that satisfies the requirements established by the lay midwifery board and that is approved by the Texas Board of Health.

(2) "Certified nurse-midwife" means a person who is a registered nurse under the laws of this state and who is certified by the American College of Nurse-Midwives.

(3) "Department" means the Texas Department of Health.

(4) "Lay midwife" means a person who practices lay midwifery.

(5) "Lay midwifery" means the practice of assisting childbirth for compensation.

(6) "Normal childbirth" means the delivery, at or close to term, of a pregnant woman whose physical examination reveals no abnormality or signs or symptoms of complications.

(7) "Natural childbirth trainer" means a person who counsels expectant mothers in the techniques of giving birth without artificial or mechanical assistance, but does not assist at childbirth.

17. Vernon's Ann.Civ.St. art. 4512i, §§ 1 to 20

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SECTION 2. EXCEPTIONS. This Act does not apply to a certified nurse-midwife, a natural childbirth trainer, a physician, a health care professional licensed by the state and operating within the scope of his license, or a person other than a lay midwife who assists childbirth in an emergency.

SECTION 3. LAY MIDWIFERY BOARD. The Texas Board of Health shall appoint a lay midwifery board composed of:

- (1) three lay midwives with at least three years of experience in the practice of lay midwifery, no more than one of whom may be a licensed health care professional;
- (2) one certified nurse-midwife;
- (3) a person licensed to practice medicine who is certified by the American College of Obstetricians and Gynecologists;
- (4) one person licensed to practice medicine who is certified by the American Board of Pediatricians; and
- (5) three persons who are not practicing or trained in a health care profession and who represent the public interest.

SECTION 4. TERMS. The members of the lay midwifery board hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

SECTION 5. OFFICERS; QUORUM; MEETINGS. (a) The lay midwifery board shall elect a chairman from one of the public interest members and a vice-chairman from any of the other members.

(b) A majority of the members of the lay midwifery board constitutes a quorum.

(c) The lay midwifery board shall meet at least once during the first year of its existence and at other times at the call of the Texas Board of Health.

SECTION 6. EXPENSES. Members may not receive compensation for service on the lay midwifery board. Each member is entitled to receive \$50 for each meeting that the member attends and the per diem and travel allowance authorized for state employees.

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SECTION 7. EXECUTIVE SECRETARY; STAFF. (a) The department shall hire an executive secretary after consultation with the lay midwifery board to perform administrative duties, including keeping the minutes of lay midwifery board meetings, maintaining records about approved training courses, and maintaining records of persons who have received a letter of completion as described in this Act.

(b) The department shall pay the salaries of the executive secretary and that of any additional staff it determines to be necessary. The department shall provide office space and supplies for the executive secretary and other staff.

SECTION 8. DUTIES AND POWERS OF THE LAY MIDWIFERY BOARD AND THE TEXAS BOARD OF HEALTH. (a) Subject to the approval of the Texas Board of Health, the lay midwifery board shall:

(1) establish requirements for an approved lay midwifery training course;

(2) establish qualifications for the lay midwifery training course instructors;

(3) issue a lay midwifery training manual;

(4) establish eligibility requirements for taking the final examination of a training course; and

(5) issue a final examination for a lay midwifery training course.

(b) The Texas Board of Health shall review and act on the materials submitted by the lay midwifery board for approval not later than the 60th day after the date on which they are submitted. To implement this Act, the Texas Board of Health may adopt rules, enter contracts, and prepare and publish reports on the practice of lay midwifery in this state.

(c) The department shall establish a procedure for reporting and processing complaints relating to lay midwifery practice in Texas.

SECTION 9. MANUAL. (a) The lay midwifery board shall approve a manual for the practice of lay midwifery. The department

Additions in text indicated by underline; deletions by [~~strikeouts~~]

shall provide the manual to any person who requests it. An approved manual must include information about:

- (1) prenatal care;
- (2) normal childbirth;
- (3) signs, symptoms, and emergency management of complications that occur in childbirth;
- (4) screening for women who are at greater risk of childbirth complications;
- (5) anatomy of the human reproduction system;
- (6) sterile techniques and procedures;
- (7) delivery techniques to prevent vaginal lacerations;
- (8) emergency treatment of vaginal lacerations occurring during childbirth;
- (9) legal requirements and procedures for reporting births and deaths;
- (10) resuscitation of the newborn;
- (11) prophylactic treatment, screening, and diagnostic tests for newborns as required by law; and
- (12) other information or procedures as determined by the department.

(b) The department may charge a fee not to exceed \$10 for each manual it distributes. The department shall make the manual available in English and Spanish.

SECTION 10. TRAINING COURSE. (a) An approved lay midwifery training course may be offered by a local health department, an accredited postsecondary educational institution, or an adult education program. The entity offering the course may charge a reasonable fee for the course.

(b) If the department determines that the number of approved courses offered in a region designated by the department is insufficient to satisfy the demand for training in the region, the department shall make a training course available on a temporary basis through its regional office. The department may charge a fee

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not to exceed \$50 for a training course it conducts. The department may waive a portion of the fee charged to an individual.

(c) The training course shall be taught in Spanish if that is the only language a participant of the course understands. If other course participants do not understand Spanish, the training course shall be taught in English and Spanish.

SECTION 11. EXAMINATION. (a) A person who has completed an approved lay midwifery training course or who has comparable training approved by the lay midwifery board is entitled to take the final examination of the training course.

(b) An applicant for examination shall submit to the department an application fee of \$25 and a completed application on a form prescribed by the lay midwifery board.

(c) The department shall administer the final examination at its regional or local offices.

(d) The examination shall be administered in English and Spanish and may be offered in written or oral form.

SECTION 12. LETTER. The department shall grant a letter of completion to a person who passes the final examination.

SECTION 13. IDENTIFICATION REQUIREMENT. (a) In December of each year, a person who practices lay midwifery shall identify himself as a lay midwife by appearing in person before the county clerk of the county in which the person resides or before the county clerk of each county in which the person practices lay midwifery and delivering to the county clerk a verified identification form that contains:

- (1) the person's name, residence, and post office address;
- (2) the person's date and place of birth;
- (3) the location of the person's practice according to counties; and
- (4) other information the department determines necessary for the identification of lay midwives.

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(b) The identification form shall be prescribed by the department.

(c) The county clerk shall provide each lay midwife who identifies himself a notice of a lay midwife's legal responsibilities under the laws and rules of this state on a form prescribed by the department. Failure to receive the notice does not constitute a defense to prosecution for acts committed in violation of the laws and rules of this state.

(d) The county clerk shall retain for the county clerk's records a copy of each identification form. The county clerk shall send the original identification form to the department. The county clerk may charge a reasonable fee for these services under Article 3930, Revised Statutes.

SECTION 14. ADDITIONAL INFORMATION. (a) The department may require information in addition to that required by Subsection (a) of Section 13 of this Act if it determines the additional information is necessary and appropriate to ascertain the nature and extent of lay midwifery in this state. The department may not require information regarding any act that is prohibited under this Act.

(b) Information received under this section may not be made public so as to disclose the identity of any person to whom the information relates. This information is not a public record as defined in Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(c) The department shall prescribe forms for the additional information and shall distribute those forms to the county clerks of this state.

(d) When a person identifies himself as a lay midwife under Section 13 of this Act, the county clerk shall give a copy of any form for additional information to the person. The person shall complete the form and return it with the identification form to the county clerk.

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(e) The county clerk shall send these forms to the department.

SECTION 15. ROSTER. (a) The department shall maintain a roster of all persons identified to practice lay midwifery.

(b) The roster shall contain for each person the information required on the identification form of this Act and other information that the department determines necessary to identify with accuracy each lay midwife who is identified under this Act. This information shall be a public record as defined in Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

SECTION 16. DUTIES OF LAY MIDWIVES; DISCLOSURE REQUIREMENT.

(a) Each lay midwife shall disclose in oral and written form to a prospective client the limitations of the skills and practices of a lay midwife.

(b) The department with the advice of the lay midwifery board shall prescribe the form of the written disclosure required by this section, which shall include the information that a lay midwife:

(1) may assist only in normal childbirth;

(2) has or does not have an arrangement with a local physician for referring patients who have complications that occur before or during childbirth;

(3) may not administer a prescription drug without a physician's supervision, perform a Cesarean section, or perform an episiotomy; and

(4) has or has not passed the lay midwife training course final examination approved by the board.

(c) The written disclosure required by this section may not exceed 500 words and must be in English and Spanish.

(d) A lay midwife shall have each client sign a written disclosure form and shall send the form to the department not later than the 30th day after the date of the birth.

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(e) A lay midwife shall encourage a client to seek prenatal care.

(f) A lay midwife shall encourage a client to seek medical care if the lay midwife recognizes a sign or symptom of a complication to the client's childbirth.

(g) Each lay midwife shall disclose to a prospective or actual client the procedure for reporting complaints with the department.

SECTION 17. PROHIBITED ACTS. A lay midwife may not:

(1) administer a prescription drug to a client except under the supervision of a licensed physician in accordance with the laws of this state;

(2) use forceps or surgical instruments for any procedure other than cutting the umbilical cord or providing emergency first aid during delivery;

(3) remove placenta by invasive techniques;

(4) advance or retard labor or delivery by using medicines or mechanical devices;

(5) use in connection with his name a title, abbreviation, or any designation tending to imply that he is a "registered" or "certified" lay midwife as opposed to one who has identified himself in compliance with this Act; or

(6) assist at childbirth other than a normal childbirth except in an emergency situation that poses an immediate threat to the life of the mother or newborn.

SECTION 18. PENALTIES. (a) A lay midwife commits an offense if the lay midwife knowingly or intentionally commits an act prohibited by this Act.

(b) An offense under this section is a Class C misdemeanor.

(c) A lay midwife who knowingly or intentionally fails to comply with the disclosure requirement of this Act commits a Class C misdemeanor.

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(d) A lay midwife who knowingly or intentionally fails to comply with the identification requirement of this Act commits a Class C misdemeanor.

SECTION 19. EFFECT ON LOCAL ORDINANCES. This Act does not prohibit an incorporated city or town from adopting a local ordinance to regulate the practice of lay midwifery within its corporate limits if the ordinance is at least as strict as this Act.

SECTION 20. FUNDS. All fees received by the department under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund and shall be appropriated to the department to defray the costs of this Act.

SECTION 21. REPEALER. Section 16, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927 (Rule 49a, Article 4477, Vernon's Texas Civil Statutes), is repealed.¹⁸

SECTION 22.¹⁹ INITIAL APPOINTMENTS. In making the initial appointments to the lay midwifery board, the Texas Board of Health shall designate one lay midwife, one public interest representative, and the obstetrician for terms expiring January 31, 1985, one lay midwife, one public interest representative, and the certified nurse-midwife for terms expiring January 31, 1987, and one lay midwife, one public interest representative, and the pediatrician for terms expiring January 31, 1989.

SECTION 23.¹⁹ REPORT. The department shall study the practice of lay midwifery in the state, including the quality of the services provided by lay midwives and the efficacy of the training program, disclosure requirements, and prohibitions established in this Act. The department shall report the results of this study to the regular session of the 71st Legislature. In the report, the

18. Vernon's Ann.Civ.St. art. 4477, rule 49a, repealed. 19. Vernon's Ann.Civ.St. art. 4512i note.

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department shall analyze the training program and shall recommend that the program be:

- (1) continued as enacted;
- (2) continued with amendments;
- (3) made mandatory; or
- (4) discontinued.

SECTION 24. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1983.

(b) Subsection (a), Section 16, and Sections 17 and 18 of this Act take effect on September 1, 1984.

SECTION 25. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on February 17, 1983, by a viva-voce vote; passed the House on May 25, 1983, by a non-record vote.

Approved June 17, 1983.

Effective Sept. 1, 1983, except §§ 16(a), 17, and 18 effective Sept. 1, 1984.

POLLING PLACES—ELDERLY AND HANDICAPPED PERSONS—ACCESSIBILITY

CHAPTER 366

S. B. No. 306

AN ACT

relating to accessibility of polling places to the elderly and physically handicapped; to the required standards of accessibility, and to duties of authorities responsible for the designation of polling places; adding Section 11a to Chapter 2, Texas Election Code.

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